

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
WASTE MANAGEMENT COUNCIL

In Re: North Country Environmental Services, Inc.  
Standard Permit No. DES-SW-SP-03-002

RECEIVED

MAY 12 2003

WMC Docket No. 03-05WMC

RESPONSE TO INTERVENOR'S MOTION TO DISMISS

The Department of Environmental Services Waste Management Division ("Department"), through the Attorney General's Office, respectfully requests this Council to consider the following in its consideration of the Motion to Dismiss filed by Intervenor North Country Environmental Services, Inc. ("NCES") and the Motion to Continue filed by the Appellant Town of Bethlehem ("Town"):

1. The Department has assented to the Town's motion to continue these proceedings because it would not make sense to conduct full-blown proceedings on the validity of the solid waste permit at the same time that the New Hampshire Supreme Court is deciding the validity of the Town's prohibition against further landfill expansion. For example, if the Council were to remand the permit to the Department for modification before the Supreme Court ruled on the local prohibition, both the Council's and Department's actions could be rendered moot by a Supreme Court affirmation of the recent lower court decision upholding the local ordinance.

2. At the same time, the Department believes that, on the merits, it has complied with all applicable laws and rules in issuing the solid waste permit and that the Town has raised no valid legal basis for this Council to grant the requested relief to the Town. NCES' Motion to Dismiss presents the legal basis for the Council to dismiss the appeal on the merits.

3. If the Council were to grant the Motion to Dismiss, based upon the written filings, limited state resources could be preserved and might allow for consolidation of a Supreme Court appeal from the Council's dismissal along with NCES' appeal of the Superior Court ruling. On that basis, there could be some economy of resources achieved.

4. Therefore, the Department believes that it is appropriate for the Council to either grant the Motion to Dismiss or, if the Motion to Dismiss is denied, to continue further proceedings in this matter until the Supreme Court issues a decision in the matter of NCES v. Town of Bethlehem.

WHEREFORE, the Department respectfully requests that the Council:

- A. Grant the Motion to Dismiss upon written submission by counsel; or
- B. If the Motion to Dismiss is denied, continue further proceedings on the merits until resolution by the Supreme Court.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE  
DEPT. OF ENVIRONMENTAL SERVICES

By its attorneys,

PETER W. HEED  
ATTORNEY GENERAL

Date:

5/8/03

**COPY** *Pat for*  
By: *Lauren Smith*  
Senior Assistant Attorney General  
Environmental Protection Bureau  
33 Capitol Street  
Concord, New Hampshire 03301  
(603) 271-3679

Certificate of Service

I certify that a copy of the foregoing Response to Intervenor's Motion to Dismiss has on this 8th day of May 2003, been mailed first class postage paid to Bryan K. Gould, Esquire and Brenda E. Keith, Esquire.

 **COPY**  
Maureen D. Smith